
Chapter 21.30A – Public Access and Recreation

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21.30A.010 – Purpose

This Chapter provides procedures and standards for the preservation, dedication, and improvement of public access to, and along the shoreline and coastal bluffs, in conjunction with development in the Coastal Zone. The intent is to ensure that public rights of access to the shoreline are protected as guaranteed by the California Constitution, and achieve the basic state goals of maximizing public access to the coast and public recreational opportunities, as set forth in the Coastal Act (Sections 3000 through 30900); to implement the public access and recreation policies of Chapter 3 of the Coastal Act (Sections 30210-30255) and the applicable policies of the Coastal Land Use Plan; and where feasible, expanded and enhanced; to ensure public access to coastal bluffs.

21.30A.020 – Applicability and Exemptions

- A. **Applicability.** This Chapter applies to coastal development permit applications on development sites located between the shoreline and the first public roadway paralleling the shoreline or on coastal bluffs.
- B. **Exemptions.** The public access requirements of this Chapter shall not apply to the following development in compliance with the Coastal Act (Public Resources Code Section 30212):
 - 1. **Structure Destroyed By Disaster.** The replacement of a structure, other than a public works facility, destroyed by disaster, provided that the replacement structure:
 - a. Conforms to applicable coastal zoning district requirements in Part 2 (Coastal Zoning Districts, Allowable Land Uses, and Coastal Zoning District Standards);
 - b. Is for the same use as the destroyed structure;

- c. Does not exceed the floor area, height, or bulk (i.e., total interior cubic volume as measured from the exterior surface of the structure) of the destroyed structure by more than 10 percent;
 - d. Is sited in the same location on the affected property as the destroyed structure.
- 2. **Demolition and Reconstruction.** The demolition and reconstruction of a single-unit or two-unit residence provided that the reconstructed residence:
 - a. Does not exceed the floor area, height, or bulk (i.e., total interior cubic volume as measured from the exterior surface of the structure) of the destroyed structure by more than 10 percent; and
 - b. Is sited in the same location on the affected property as the former structure.
- 3. **Improvements.** Improvements to a structure that do not:
 - a. Change the intensity of its use;
 - b. Increase either the floor area, height, or bulk of the structure by more than 10 percent;
 - c. Block or impede existing access; and
 - d. Result in a seaward encroachment by the structure.
- 4. **Repair and Maintenance of a Shoreline Protective Device.** The reconstruction or repair of a bulkhead; provided that the reconstructed or repaired bulkhead is not seaward of the location of the former bulkhead.
- 5. **Repair and Maintenance.** A repair or maintenance activity consistent with Public Resources Code Section 30212.b.(5).

21.30A.030 – Protection and Provision of Public Access Required

- A. **Protection of Existing Public Access.** Development shall not interfere with public right of access to the shoreline or coastal bluffs where the rights have been acquired through use or legislative authorization, including, but not limited to the public accessways identified in the Coastal Land Use Plan. Public access rights may include, but are not limited to, the use of dry sand and rocky beaches to the first line of terrestrial vegetation.
- B. **Provision of New Public Access.** An offer to dedicate an easement (or other legal mechanism pursuant to Section 21.30A.060) for the permanent right of lateral, vertical, and/or coastal bluff access shall be required as a condition of approval, and prior to issuance, of a coastal development permit or other authorization for any development causing or contributing to adverse impacts to public access, unless exempt in compliance with Section 21.30A.020 (B) or waived by the review authority in compliance with Section 21.30A.050 (J). Where feasible, public access to and along the shoreline and to beaches, coastal waters, tidelands, coastal parks, and trails shall be expanded and enhanced.
- C. **Recreation.** Park and recreational facilities provided for by dedications and/or in lieu fees shall be required consistent with Section 66477 of the Subdivision Map Act (known as

the Quimby Act) as a condition of approval and prior to issuance of a coastal development permit or other authorization for any development causing or contributing to adverse impacts to public recreation. Where feasible, recreational opportunities in the coastal zone shall be expanded and enhanced.

- D. **Public Trust Lands.** Public access on public trust lands shall be provided pursuant to Section 21.48.085 (Public Trust Lands) and the Common Law Public Trust.
- E. **Regulation of Beach Use.** See Section 21.48.055.

21.30A.040 – Determination of Public Access/Recreation Impacts

- A. **Relationship and Proportionality.** The provision of public access shall bear a reasonable relationship between the requirement and the project's impact and shall be proportional to the impact.
- B. **Methodology.** In determining a development's impact on public access, the City shall evaluate the factors listed below. Any access dedication required as a condition of approval shall be supported by substantial evidence in the record and findings shall explain how the adverse effects that have been identified will be alleviated or mitigated by the dedication. As used in this section, "cumulative effect" means the effect of the individual project in combination with the effects of past projects, other current projects, and reasonably foreseeable projects.
 - 1. **Land Use.** The project's cumulative effect on use of private lands suitable for visitor-serving commercial recreational facilities designed to enhance public opportunities for coastal recreation and other priority uses specified in California Public Resources Code Section 30222 and Section 30223.
 - 2. **Demand for Access and Recreation.** The project's cumulative effects upon the use and capacity of the identified access and recreation opportunities, including the ocean, harbor, bay, channels, estuaries, salt marshes, sloughs, beaches, coastal parks, trails, or coastal bluffs; the capacity of coastal access roads; public parking; and recreational support facilities and services.
 - 3. **Obstructions.** Any physical aspects of the project that would block or impede public access to and along the sea or shoreline and to coastal parks, trails, or coastal bluffs, including placement of structures, private streets, shoreline protective structures, barriers, guardhouses, gates, fences, or signs.
 - 4. **Visual Access.** The project's cumulative effects on public access to public views to the ocean, harbor, bay, channels, estuaries, salt marshes, sloughs, beaches, coastal bluffs, and other scenic coastal areas.
 - 5. **Vessel Launching, Berthing, and Storage.** The project's cumulative effects on vessel launching, berthing, and storage facilities and other facilities providing public access to the ocean, harbor, bay, channels, estuaries, salt marshes, and sloughs.
 - 6. **Shoreline Processes.** The project's cumulative effects upon shoreline conditions, including beach profile; the character, extent, accessibility and usability of the beach; erosion or accretion; character and sources of sand; wave and sand

movement; and any other anticipated changes to shoreline processes that have the potential to adversely impact public access to and along the shoreline and to the harbor, bay, channels, estuaries, salt marshes, sloughs, and coastal bluffs.

7. **Other Impacts.** Any other aspects of the project, which, individually or cumulatively, are likely to diminish the public's use of the ocean, harbor, bay, channels, estuaries, salt marshes, sloughs, beaches, coastal parks, trails, or coastal bluffs.

21.30A.050 – Development Standards

This section provides standards for the location and configuration of public access to ensure public safety and to protect public rights, rights of private property owners and leaseholders, and natural resource areas from overuse.

A. Site Planning and Design Criteria.

1. **General.** Public access improvements shall be designed to:
 - a. Maximize public access to and along the shoreline and coastal bluffs;
 - b. Where opportunities exist, provide new vertical accessways in areas of limited public accessibility;
 - c. Where opportunities exist, incorporate pedestrian, hiking, bicycle, and equestrian trails;
 - d. Where opportunities exist, provide connections to beaches, parks, recreational facilities, and trail systems;
 - e. Where opportunities exist, integrate into project designs, such as restaurants with outdoor waterfront dining areas and boarding areas for charter and excursion vessels;
 - f. Where opportunities exist, provide access to coastal view corridors, where possible;
 - g. Where opportunities exist, alternative modes of transportation;
 - h. Minimize alterations to natural landforms;
 - i. Account for long-term projections in sea level rise and coastal bluff erosion rates;
 - j. Protect environmentally sensitive habitat areas consistent with Coastal Act Section 30240; and
 - k. Protect open coastal waters, wetlands, estuaries, and lakes consistent with Coastal Act Section 30233.
 - l. Protect private property rights.

2. **Open and Unobstructed.** Public access shall be open and unobstructed.
3. **Barriers Prohibited.** Development designed to restrict access to and along the shoreline or coastal bluffs (i.e., barriers, gates, guardhouses, private streets, etc.) shall be prohibited.
4. **Location in Setback Areas.** Public access easements may be provided within required setback areas.
5. **Privacy Buffers.** A 10-foot wide buffer area between a public accessway and a residential structure shall be provided on the site when necessary to protect the landowner's privacy or security as well as the public's right to use the accessway. The review authority may reduce the width of the buffer area where separation is achieved through landscaping, fences, or changes in grade elevation.
6. **Sensitive Areas.** Public access improvements shall be sited, designed, and maintained to avoid or minimize impacts to environmentally sensitive habitat areas (ESHAs), wetlands, coastal dunes, and other sensitive resource areas in compliance with Chapter 21.30B (Environmentally Sensitive Areas).
7. **Lateral Access Design Features.**
 - a. **Location.**
 - (1) A lateral accessway shall extend along the entire width of a lot.
 - (2) A lateral accessway shall be located on land, when feasible. A lateral accessway that consists of decking and/or boardwalks extending over the water or floating walkways may be allowed only when existing development makes onshore lateral access infeasible or as part of a comprehensive program to provide waterfront access.
 - b. **Alignment.** A lateral accessway shall align with existing lateral accessways, unless an alternative alignment is approved pursuant to subsection J. of this section.
 - c. **Required Segments.** Lateral accessways segments shall be provided in the following areas:
 - (1) **Lido Marina Village.** On all bayfront nonresidential and mixed-use lots in Lido Marina Village.
 - (2) **Cannery Village and McFadden Square.** On all bayfront lots in Cannery Village and McFadden Square from 31st Street to 19th Street.
 - (3) **Mariners' Mile.** On all bayfront lots in Mariners' Mile from the Coast Highway/Newport Boulevard Bridge to the Balboa Bay Resort.
 - c. **Minimum Width.** Lateral accessways shall be the following minimum widths:

- (1) **Lots With Dry Sand or Rocky Coastal Beaches.** For lots with dry sand or rocky coastal beaches, a lateral accessway shall be a strip of land that extends landward from the mean high water line the greater of the following distances:
 - (a) 10 feet; or
 - (b) If the width of the beach is greater than 10 feet, to a fixed point at the most seaward of the primary extent of development, the toe of the bluff, or the first line of terrestrial vegetation. For purposes of this paragraph, the primary extent of development shall mean the intersection of sand with toe of revetment, the vertical face of a bulkhead, or other appropriate boundary (e.g., drip line of a deck, etc.).
 - (2) **Lots With Shoreline Protective Devices.** For lots with shoreline protective devices, a lateral accessway shall be a minimum of 10 feet in width as measured landward from the shoreline protective device.
 - (3) **Lots on Coastal Blufftops.** For lots on a coastal blufftops, a lateral accessway shall be a minimum of 10 feet in width as measured upland from the bluff edge.
- d. **Construction Design.** A lateral accessway may include open or enclosed unobstructed walkways; exterior decking and/or boardwalks; interior breezeways and/or walkways with a minimum vertical clearance of 8 feet above-grade, provided that the breezeways are located as close as possible to the water and are designed to provide the most direct, convenient connection between adjacent existing or potential lateral access. Exterior access is preferred over interior access.

8. **Vertical Access Design Features.**

- a. **Location.** Where feasible, a minimum of one vertical accessway at every street stub, or where there are no street stubs, at every 500 feet.
- b. **Linkage.** Where feasible, vertical accessways shall link with lateral accessways.
- c. **Minimum Width.** A vertical accessway shall be a minimum of 6 feet in width.

9. **Coastal Bluff Access Design Features.**

- a. **Lateral Access.** See Section 21.30A.050 (A)(7)(b)(3).
- b. **Street and Trail Connections.** Public access to coastal bluff areas shall be provided through design of the local street system and through the location of public trails and walkways adjacent to the bluffs.

- c. **View Parks and Vista Points.** Areas adjacent to coastal bluffs having significant view potential shall be designated for use as view parks or vista points consistent with parkland dedication requirements.
- 10. **Bayfront Amenities.** Nonresidential development along the bayfront shall provide amenities to assure access for coastal visitors. Bayfront amenities include, but are not limited to seating, trash enclosures, water fountains, lighting, viewing areas, lighting, and other pedestrian-oriented improvements.
- B. **Usage Limits.** Controls on the time, place, and manner of uses (e.g., limiting access to pass and repass; restricting hours of use; etc.) may be imposed in compliance with Chapter 21.52 (Coastal Development Review Procedures).
- C. **Signage.** Public accessways shall be identified by signs that conform to the Coastal Access Signing Program contained in Appendix B.
- D. **Removal of Unauthorized Structures.** Unauthorized development, including, but not limited to signs, landscaping, and fences that inhibit public access shall be removed.
- E. **Parking.**
 - 1. **Off-Street Parking Spaces Required.** Off-street parking spaces shall be provided in compliance with Chapter 21.40.
 - 2. **Public Parking Restrictions Prohibited.** Restrictions on public parking (e.g., the posting of “no parking” signs, painting curbs red, installation of physical barriers, etc.), shall be prohibited.
 - a. **Exception.** The reviewing body may waive this standard where such restrictions are needed to protect public safety and where no other feasible alternative exists to provide public safety.
 - b. **Mitigation.** Development that results in restrictions on public parking shall provide an equivalent quantity of public parking nearby as mitigation for impacts to coastal access and recreation, where feasible.
 - 3. **Protection of Existing Public Parking.** Existing public parking that supports public access shall be protected. Any development that results in a reduction of public parking supporting public access shall provide an equivalent quantity of public parking nearby as mitigation.
 - 4. **Use of Parking Areas During Low-Demand Periods.** Commercial or institutional development causing or contributing to adverse impacts to public access or recreation may be conditioned to allow use of parking areas for public access outside of normal business hours (i.e., on weekends and holidays), where feasible. Parking areas may be used for motor vehicle parking, bicycle parking, or in conjunction with public transit or shuttles that serve coastal recreational areas.
 - 5. **Parking for Vertical Accessways.** Parking shall be provided by the developer in conjunction with new or improved vertical accessways, whenever feasible and consistent with site constraints, environmental constraints, and safety conditions.

- F. **Interference with Public Use Prohibited.** After making an offer to dedicate public access in compliance with this Chapter, the property owner shall not interfere with use by the public of the areas subject to the offer before and after acceptance by the responsible entity.
- G. **Encroachments Prohibited.** Encroachments or the installation of non-access-related private improvements into public accessways shall be strictly prohibited, except as provided by Section 21.30A.100 (Permitted Encroachments into Public Accessways).
- H. **Vacation of Public Accessways.** Vacations of public accessways, including, but not limited to, easements and public street ends identified as providing public access, shall require a coastal development permit pursuant to Section 21.44.045 (Vacations and Abandonments).
- I. **Prescriptive Rights.**
1. **Location of Development Where Prescriptive Rights Identified.** The design and siting of development shall not interfere with the potential public rights based on historic public use; unless the review authority determines that replacement public access of an equivalent type, intensity, and area will be provided on, or immediately adjacent to, the development site.
 2. **Condition Not Determinative of Prescriptive Rights.** An access condition shall not serve to extinguish, adjudicate or waive potential prescriptive rights. The following language shall be added to the access condition in a permit with possible prescriptive rights:

"Nothing in this condition shall be construed to constitute a waiver of, or a determination on, an issue of prescriptive rights that may exist on the lot itself or on the designated easement."
- J. **Modification or Waiver of Public Access Requirements.**
1. **Lateral Access.** The lateral access requirements specified in Section 21.30A.050 (A) may be waived or modified in the following situations:
 - a. When the applicant can demonstrate, based on an engineering analysis, that all or a portion of such access is physically infeasible and there are no design alternatives capable of overcoming topographical or site constraints that jeopardize public safety or fragile coastal resources.
 - b. Where marine service equipment and operations present security or public safety concerns, waterfront access detours are necessary in order to maintain facilities and services essential to the operation of the harbor.
 2. **Vertical Access.** The vertical access requirements specified in Section 21.30A.050 (A) (2) may be waived or modified in the following situations:
 - a. When the provisions of new accessways are inconsistent with public safety, military security needs, or the protection of fragile resources.
 - b. When adequate access exists nearby.

3. **Coastal Bluff Access.** The coastal bluff access requirements specified in Section 21.30A.050 (B) may be waived or modified in the following situations:
 - a. When the design of the existing local street system and/or the location of existing public trails and walkways cause all or a portion of such access to be physically infeasible and there are no design alternatives capable of overcoming these constraints.
 - b. When the applicant can demonstrate, based on an engineering analysis, including slope stability analysis and erosion rate estimates, that all or a portion of such access is physically infeasible and there are no design alternatives capable of overcoming topographical or site constraints that jeopardize public safety or fragile coastal resources.
 - c. When adequate access exists nearby.

21.30A.060 – Access Title and Guarantee

Where public coastal accessways are required as a condition of approval of a coastal development permit or other authorization, a guarantee of the access through deed restriction, or dedication of right-of-way or easement shall be required. Prior to the issuance of a coastal development permit or other authorization, the method and form of the access guarantee shall be approved by City Attorney, and shall be recorded in the office of the County Recorder, identifying the precise location and area to be set aside for public access. The method of access guarantee shall be chosen according to the following criteria:

- A. **Deed Restriction.** A deed restriction shall be used only where an owner, association or corporation agrees to assume responsibility for maintenance of and liability for the public access area, subject to approval by the Director.
- B. **Grant of Fee Interest or Easement.** A grant of fee interest or easement shall be used when a public agency or private organization approved by the City Council is willing to assume ownership, maintenance and liability for the access.
- C. **Offer of Dedication.** An offer of dedication shall be used when no public agency, private organization or individual is willing to accept fee interest or easement for accessway maintenance and liability. These offers shall not be accepted until maintenance responsibility and liability is established.

21.30A.070 – Coastal Commission Review of Recorded Access Documents

- A. **Standards and Procedures.** Upon final approval of a coastal development permit or other authorization for development, and where issuance of the permit or authorization is conditioned upon the applicant recording a legal document which restricts the use of real property or which offers to dedicate or grant an interest or easement in land for public use, a copy of the permit conditions, findings of approval, and drafts of any legal documents proposed to implement the conditions shall be forwarded to the Coastal Commission for review and approval prior to the issuance of the permit consistent with the following procedures and California Code of Regulations Section 13574:
 1. The Executive Director of the Coastal Commission shall review and approve all legal documents specified in the conditions of approval of a coastal development permit for public access and conservation/open space easements.

- a. Upon completion of permit review, and prior to the issuance of the permit, the City shall forward a copy of the permit conditions, findings of approval, and copies of the legal documents to the Executive Director of the Coastal Commission for review and approval of the legal adequacy and consistency with the requirements of potential accepting agencies;
 - b. The Executive Director of the Coastal Commission shall have fifteen (15) working days from receipt of the documents in which to complete the review and notify the City of recommended revisions if any;
 - c. The City may issue the permit upon expiration of the fifteen (15) working day period if notification of inadequacy has not been received by the City within that time period;
 - d. If the Executive Director has recommended revisions to the City, the permit shall not be issued until the deficiencies have been resolved to the satisfaction of the Executive Director; or
2. If the City requests, the Coastal Commission shall delegate to the City the authority to process the recordation of the necessary legal documents pertaining to the public access and open space conditions. Upon completion of the recordation of the documents the City shall forward a copy of the permit conditions and findings of approval and copies of the legal documents pertaining to the public access and open space conditions to the Executive Director of the Coastal Commission.

21.30A.080 – Timing of Access Requirements

The type and extent of access to be dedicated, and/or constructed and maintained, as well as the method by which its continuing availability for public use is to be guaranteed, shall be established at the time of coastal development permit approval or other authorization, as provided by this section.

- A. **Guarantee Precedes Permit Issuance.** The guarantee of public access in the form required in compliance with Chapter 21.52 (Coastal Development Review Procedures) shall occur before issuance of construction permits or the start of construction activity not requiring a permit.
- B. **Construction of Improvements.** Construction of improvements shall occur at the same time as construction of the approved development, unless another time is established through conditions of coastal development permit approval or other authorization.
- C. **Interference with Public Use Prohibited.** Following an offer to dedicate public access pursuant to this section; the property owner shall not interfere with use by the public of the areas subject to the offer before and after acceptance by the responsible entity.

21.30A.090 – Management and Maintenance

- A. **Controls.** Based on substantial evidence and documentation, the City may require controls on the time, place, and manner of public access when justified by site characteristics, including topographic and geologic conditions, the intensity of use and the capacity of the site to sustain the use, the fragility of natural resource areas, the need to protect the privacy or security of residential development, public safety services access, and the provision of support facilities.

- B. **Management Plan.** A management plan may be required in conjunction with a dedication of public access in any case where there is substantial evidence of potential conflicts between public access use and other uses on or immediately adjacent to the site.
- C. **Maintenance.** A dedicated public accessway shall not be required to be opened to public use until a public agency or private association approved by the City Council agrees to accept responsibility for maintenance and liability of the access, except in cases where immediate public access is implemented through a deed restriction.

21.30A.100 – Permitted Encroachments into Public Accessways

- A. **Purpose.** This section establishes procedures for approval of permitted encroachments, removal of prohibited encroachments, limiting the extent of encroachments, and clarification of improvements permitted within public accessways.
- B. **Public Right-of-Way Encroachments.** Standardized private improvements permitted within public rights-of-way with an encroachment permit and, if applicable, an encroachment agreement, provided such improvements do not interfere with the use of public accessways or otherwise diminish public rights. Such improvements include, but are not limited, to:
 - 1. Driveways approaches constructed to Standard Plans and Specifications of the City of Newport Beach;
 - 2. Carriage walks;
 - 3. Median and parkway landscaping;
 - 4. CATV and public utility facilities;
 - 5. Mailboxes, when required by the U.S. Postal Service;
 - 6. Utility pedestals;
 - 7. Structural encroachments, including but not limited, to fences, walls, patios, and raised planters that do not exceed three (3) feet; and
 - 8. Improvements consistent with Subsection C.
- C. **Oceanfront Boardwalk.** The maximum seaward extent of encroachments shall be limited to the following encroachment zones:
 - 1. **Encroachment Zones.**
 - a. **Santa Ana River to 52nd Street.** A maximum of fifteen (15) feet seaward of the rear (ocean facing) property line within the seaward prolongation of the side property lines.
 - b. **52nd Street to 36th Street.** A maximum of ten (10) feet seaward of the rear (ocean facing) property line within the seaward prolongation of the side property lines.

- c. **36th Street to E Street.** Between A Street and a point two hundred and fifty (250) feet southeast of E Street, up to the inland edge of the Oceanfront Boardwalk (7 to 8 feet seaward of the rear property line) and within an seaward prolongation of the side property lines.
- d. **From a point 250 feet southeast of E Street to Channel Road.** A maximum of fifteen (15) feet seaward of the rear (ocean facing) property line within the seaward prolongation of the side property lines.

2. **Prohibited Encroachments.**

- a. Encroachments and improvements are prohibited seaward of private property between 36th Street and A Street provided, however, the northerly edge of Oceanfront Boardwalk in this area is not always coincident with the seaward private property line. Improvements northerly of the north edge of the boardwalk are not considered encroachments or prohibited by this section;
- b. Encroachments, including irrigation systems, and improvements are prohibited seaward of any ocean front parcel from a point two hundred and fifty (250) feet southeast of E Street to Channel Road, provided existing trees which have been planted and maintained in conformance with City standards, and ground cover such as existing, non-irrigated ice plant or indigenous plants are not considered to be an encroachment, and will not require a permit pursuant to this section;
- c. Any existing encroachment or improvement for which no application has been filed on or before May 31, 1992, and any new encroachment or improvement for which no application is filed prior to installation is prohibited;
- d. Any new or existing encroachment or improvement which, on or after July 1, 1992, is not in conformance with this section is prohibited;
- e. Any new or existing encroachment or improvement for which there is no valid permit.

3. **Permitted Improvements.** The following improvements are permitted within the encroachment zones:

- a. Patio slabs or decks no higher than six (6) inches above grade or the finished floor grade of the adjacent residence;
- b. Walls and/or fences less than thirty-six (36) inches in height above grade or the finished floor grade of the existing residence;
- c. Existing improvements which were constructed in conjunction with development for which a building permit was issued prior to May 31, 1992, may be approved by the Public Works Director upon a finding that the

improvement is consistent purpose of this chapter and the cost of strict compliance is disproportionate to the extent of the nonconformity.

- d. Protective devices necessary to control erosion, provided the device is sited to occur as close to private property as feasible.

4. **Prohibited Improvements.** The following improvements are prohibited within the encroachment zones:

- a. Except for perimeter walls and/or fences less than thirty-six (36) inches in height, any structural, electrical, plumbing or other improvements which require issuance of a building permit;
- b. Pressurized irrigation lines and valves;
- c. Any object which exceeds thirty-six (36) inches in height, exclusive of the following:
 - i. Trees planted by the City or private parties pursuant to City standards; or
 - ii. Any landscaping or vegetation within the encroachment zone subject to the following:
 - (1) The vegetation or landscaping was installed prior to November 26, 1990;
 - (2) The vegetation or landscaping does not impact public access, recreation, views and/or coastal resources;
 - (3) The vegetation or landscaping does not meet the definition of a hedge;
 - (4) The vegetation or landscaping does not impair or affect the health, safety or welfare of persons using the Oceanfront Boardwalk, nearby property owners, or residents of the area;
 - (5) Vegetation or landscaping within coastal dune habitat is restricted to native plant species;
 - (6) New plant materials that have been approved under a separate coastal development permit.

5. **Modification to Improvement Limits.** The Public Works Director may approve minor dimensional tolerances for permitted improvements only upon a finding that the improvement is consistent with the purpose of this chapter and the cost of strict compliance is disproportionate to the extent of the nonconformity. In no event shall the Public Works Director approve a permit for an improvement that varies more than twelve (12) inches from the horizontal dimensional regulations of this section.

6. **Maintenance.**

- a. Improvements shall be maintained in a manner that does not impact public access, recreation, views and/or coastal resources;
- b. Landscaping improvements shall be maintained in compliance with Section 21.30.075 (B)(4);
- c. The City shall reduce the height of any existing landscaping at any time, upon a determination by the Public Works Director, and after notice to the owner of property on which the vegetation or landscaping exists, that a reduction in height is necessary or appropriate.

7. **Permits.**

- a. **Annual Permit Required.** An encroachment permit shall be required each year for all permitted improvements.
 - b. **Renewal.** The Public Works Director shall approve annual renewal if:
 - i. The applicant has complied with all standard and special conditions of approval;
 - ii. The applicant has constructed only those improvements and encroachments authorized by the permit;
 - iii. The applicant is in compliance with all of the provisions of this section.
 - c. **Annual Fees.** Annual permit fees shall be set by the City's master fee schedule.
8. **Waiver.** The applicant shall agree to waiver of any right to contest the City's street and public access easement over the property within or seaward of the encroachment zones.
9. **Revocation.** The City shall, in addition to any right or remedy provided by law, have the right to do any or all of the following in the event an applicant is in violation of the provisions of this section, or any condition to the permit, or any encroachment or improvement violates the provisions of this section:

Revoke the permit after giving the applicant notice and an opportunity to be heard upon a determination that there is substantial evidence to support a violation.

Summarily abate any encroachment or improvement violative of this section after giving the applicant or property owner ten (10) days written notice of its intention to do so in the event the applicant or property owner fails to remove the encroachment or improvement. The applicant or property owner shall pay all costs incurred by the City in summarily abating the encroachment or improvement. The determination of the Public Works Director with respect to abatement shall be final.

10. **Use of Funds.** A minimum of eighty-five (85) percent of the fees generated by encroachments permits shall be used for the construction and maintenance of improvements which directly benefit the beach-going public such as parking spaces, restrooms, West Newport/Balboa Peninsula shuttle program, vertical or lateral walkways along the beach and similar projects.